

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SATICOY BAY LLC, SERIES 2714
SNAPDRAGON,

Plaintiff(s),

v.

FLAGSTAR BANK, FSB, et al.,

Defendant(s).

Case No. 2:13-CV-1589 JCM (VCF)

ORDER

Presently before the court is plaintiff Saticoy Bay LLC's (hereinafter "plaintiff") motion for summary judgment. (Doc. # 30). Defendant Flagstar Bank, FSB (hereinafter "defendant") filed a response, (doc. # 37), and plaintiff filed a reply, (doc. # 41).

Also before the court is defendant's counter-motion for summary judgment. (Doc. # 43). Plaintiff Saticoy Bay LLC (hereinafter "plaintiff") filed a response. (Doc. # 44). Defendant has not filed a reply, but the deadline to reply has not yet passed.

Defendant moves for summary judgment on the grounds that Nevada Revised Statute 116.3116 is unconstitutional. In its motion, defendant notes that it served notice of this constitutional challenge on the Nevada attorney general on February 12, 2015. Defendant attaches proof of this notice as exhibit 2 to its motion. (Doc. # 43).

Defendant has shown compliance with Federal Rule of Civil Procedure 5.1. *See* Fed. R. Civ. P. 5.1(a) (providing that a party that files a motion questioning the constitutionality of a state statute must provide notice to the state attorney general).

Rule 5.1 also requires the court to "certify to the appropriate attorney general that a statute has been questioned" under 28 U.S.C. § 2403. Fed. R. Civ. P. 5.1(b). This statute states that the

1 court "shall permit the State to intervene for presentation of evidence, if evidence is otherwise
2 admissible in the case, and for argument on the question of constitutionality." 28 U.S.C. § 2403(b).

3 In light of the foregoing rule and statute, the court will deny the parties' motions for
4 summary judgment without prejudice to allow the court to comply and the attorney general to
5 intervene. The parties may renew their motions after the attorney general has been afforded time
6 to respond.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the parties' motions for
9 summary judgment, (docs. # 30, 43), be, and the same hereby are, DENIED without prejudice.

10 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
11 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
12 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
13 Nevada for presentation of argument on the question of the constitutionality of the statute.

14 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
15 certified mail to the Nevada attorney general.

16 DATED March 19, 2015.

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18 UNITED STATES DISTRICT JUDGE